Supreme Court, U.S.
FILED

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No. _____ OFFICE OF THE CLERK

In The
SUPREME COURT of the UNITED STATES

No. 02-0503

MARGARET O'CONNOR,
Petitioner,

v.

PAMELA S. P. AND GEORGE P.,
Respondents.

No. 02-0504

MARGARET O'CONNOR,
Petitioner,

v.

TINA M. BUSCH,
Respondent.

On Petition For Writ Of Certiorari To The Wisconsin Court Of Appeals, District II

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. DOES FEAR OF FUTURE VIOLENT CONDUCT STEMMING FROM PAST VIOLENT CONDUCT, WARRANT SUSPENSION OF PETITIONER'S FREEDOM OF MOVEMENT AS EQUITABLE RELIEF THAT IS DISPROPORTIONATE TO THE LAWLESS CONDUCT, WHEN CRIMINAL LAWS THAT ARE READILY AVAILABLE HAVE NOT BEEN EXAMINED FOR THEIR ADEQUACY IN PROVIDING RELIEF?

II. WHETHER THIS COURT SHOULD GRANT CERTIORARI TO INDEPENDENTLY REVIEW IF TRIAL COURT CONCLUSIONS ARE SUPPORTED BY FINDINGS OF FACT, IN LIGHT OF THE HARSH AND NOVEL SANCTION OF PETITIONER BEING PERMANENTLY BANISHED FROM WALWORTH COUNTY, WISCONSIN BY JUDICIAL DECREES?

III. WHETHER THIS COURT SHOULD GRANT CERTIORARI TO ADDRESS WHAT IS OMITTED FROM THE COURT OF APPEALS OPINION, AN EXAMINATION OF THE CONSTITUTIONALITY OF THE IMMEDIATE IRREPUTABLE INJURY PETITONER WILL SUFFER BY THE SUSPENSION OF EXERCISE OF HER FUNDAMENTAL RIGHTS VIA THE SANCTION OF PERMANENT BANISHMENT FROM WALWORTH COUNTY, WISCONSIN ENFORCED BY JUDICIAL DECREES, WHEN ENGAGING IN, OTHERWISE, LAWFUL ACTIVITY?

PARTIES

The Petitioner is Margaret O'Connor, the Defendant in the circuit court, the Appellant in the Wisconsin Court of Appeals, and the Petitioner in the Wisconsin Supreme Court.

The Respondents are Pamela S. P. and George P., the Plaintiffs in the circuit court, the Respondents in the Wisconsin Court of Appeals, and the Respondents in the Wisconsin Supreme Court.

The Respondent is Tina M. Busch, the Petitioner in the circuit court, the Respondent in the Wisconsin Court of Appeals, and the Respondent in the Wisconsin Supreme Court.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the decision of the Wisconsin Court of Appeals, in Pamela S. P. and George P. v. Margaret O'Connor, Tina M. Busch v. Margaret O'Connor, 260 Wis. 2d 323, 660 N.W.2d 1 (Ct. App. 2003), which was given binding effect in the State of Wisconsin by the decision of the Wisconsin Supreme Court to deny review on April 22, 2003.

OPINIONS BELOW

The order of the Wisconsin Supreme Court is unpublished and is reproduced in the Appendix to this petition. The decision of the Wisconsin Court of Appeals is published as Pamela S. P. and George P. v. Margaret O'Connor, Tina M. Busch v. Margaret O'Connor, 260 Wis. 2d 323, 660 N.W.2d 1 (Ct. App.

2003), and is reproduced in the Appendix to this petition.

The Wisconsin Court of Appeals entered its decision on January 22, 2003. Petitioner sought review by the Wisconsin Supreme Court, and Petition for Review was denied on April 22, 2003.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Amend. I provides that:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

STATUTES INVOLVED

Wisconsin Statutes § 785.03(1)(a) § 785.04(1) govern remedial contempt of court procedure.

Wisconsin Statute § 813.125 governs harassment restraining order and injunction procedure.

The provisions of Chapter 785 as well as of § 813.125 are reproduced in the Appendix to this Petition.

STATEMENT OF THE CASE

Petitioner seeks additional judicial review of orders in two related cases originating in the Circuit Court of Walworth County, Wisconsin, Robert J. Kennedy, presiding Judge, and arising out of harassing and contumacious conduct allegedly engaged in by Petitioner against Respondents Pamela S. P. and George P. ("P.") and Respondent Tina M. Busch ("Busch"). The P. appeal arises from the

allegation and finding that Petitioner's conduct was in violation of the circuit court's previous orders and, therefore, contempt of court in the civil context. Whereas, the Busch appeal arises from an original filing for, and grant of, injunctive relief under the harassment statute.

The ordered relief from the bench in both cases that is in need of further deliberation by this Court, was banishment from Walworth County permanently, with the exception of entry only for court appearances.

Central to the issue of the circuit court warranting banishment from Walworth County was the finding that Petitioner had run Tina Busch's vehicle off the road knowing that the vehicle carried one of the P's children. Since this allegation received judicial credibility, then so did the past allegation that Petitioner attempted to run Pamela S. P. off the road when she was jogging in 1996. Petitioner fully

acknowledges that these are disturbing findings by the circuit court that give credence to a more precisely tailored restriction on Petitioner's freedom of movement.

Procedural Status And Lower Court Disposition

***P* Case**

On or about October 10, 2001, the Ps filed an Order to show cause with requested relief, alleging that Petitioner was in contempt of court. (P R.76:3). The court held hearings on October 17, 2001 and November 1, 2001. (P R.80; R.81).

In a ruling from the bench at the close of the November 1, 2001 hearing, the circuit court found Petitioner in contempt for two reasons. First, the circuit court found that Petitioner violated previous orders barring contact with members of the P family when Petitioner gesticulated, yelled, and drove in a

threatening manner in close proximity to a vehicle driven by Tina M.Busch, who was driving with the Ps' daughter in her vehicle. (P R.81:149:22-152:8). Second, the circuit court found that Petitioner had on numerous occasions violated a previous Order dated August 28, 2001, that proscribed Petitioner from uttering the P name in the presence of anyone other than counsel. (P R.81:152:9-157:19). The circuit court imposed remedial sanctions and additional purge conditions, among them, the requirement, that Petitioner never again enter Walworth County. (P R.81:157:20-159:15).

The circuit court's November 1, 2001 ruling was reduced to an Order dated November 19, 2001, which provides in pertinent part:

> **The Court further finds that defendant failed to purge successfully the Court's August 28, 2001 Order requiring defendant to serve 90 days incarceration in the Walworth County Jail for contempt as set forth in the August 28, 2001 Order, *but the Court will allow defendant to***

> ***purge such violation by remaining outside of Walworth County permanently***, but if defendant violates this purge condition, then defendant will be subject to the imposition of the original 90 days incarceration contempt sanctions to be served in the Walworth County Jail as set forth in the Court's August 28, 2001 Order, but defendant may purge same by the payment of $5,000.00 within 14 days of the Court's finding such condition of No-Entry to Walworth County has been violated, with the $5,000.00 being payable to the McClure Law Offices, S.C. Special Trust Account.

(P R.64:2-3) (emphasis supplied).

Petitioner moved for modification of the purge conditions and stay pending appeal, but the circuit court denied both motions in an Order dated January 9, 2002 and a Status ruling dated March 5, 2002. (P R.72; R.76).

***Busch* Case**

Busch filed a petition for an injunction under the harassment statute on or about October 16, 2001. On October 22, 2001, was the hearing of the petition. Petitioner did not appear, and the Court granted a default judgment in favor of Busch. Relying in part

on testimony adduced in the P proceeding, the circuit court enjoined Petitioner from having any contact with Busch and also enjoined Petitioner from entering Walworth County. (Busch R.5). By subsequent Order dated January 11, 2002 and Status ruling dated March 5, 2002, the circuit court denied Petitioner's Motion to Reconsider. (Busch R.15; Busch R.19).

Petitioner appealed the circuit court's decisions in both the P and Busch cases, and the Court of Appeals consolidated the cases for decision after all briefs were filed on behalf of all parties. The Court of Appeals issued its consolidated decision on January 22, 2003, affirming the circuit court in all respects. (Appendix A).

Petitioner filed a timely Petition for Review to the Wisconsin Supreme Court. By order dated April 22, 2003, the Wisconsin Supreme Court denied review. (Appendix G).

REASONS FOR GRANTING THE WRIT

I. THE WISCONSIN COURT OF APPEALS IS IN CONFLICT WITH ALL COURTS OF EQUITY, BY NOT NARROWLY TAILORING RELIEF WHEN REQUIRED BY THE MARGINS OF RULE; ESPECIALLY WHEN FINELY TAPERING RELIEF TO THE LAWLESS CONDUCT IS DEMANDED TO OFFSET IMMEDIATE IRREPUTABLE INJURY THAT WILL OCCUR IF FUNDAMENTAL RIGHTS OF A SUBJECT INDIVIDUAL ARE SUSPENDED FROM BEING EXERCISED FOR ENGAGING IN, OTHERWISE, LAWFUL CONDUCT.

A. Requirements For Imposition Of Remedial Sanctions In Civil ContemptProceedings.

The authority of a court to impose remedial sanctions for contempt of court finds its source in both statutes and the inherent power of the courts to enforce a lawful order. *See* Wis. Stat. § 785.03(1)(a); *In re D.A.A.P.*, 117 Wis. 120, 126, 344 N.W.2d 200 (Ct. App. 1983). Under Wis. Stat. § 785.04(1), a court has the authority to impose jail time as a remedial sanction for contempt. However, the

contemnor must be able to purge the sanction through compliance with the court's orders. *See N.A. V. G.S.*, 156 Wis. 2d 338, 342, 456 N.W.2d 867 (Ct. App. 1990) (citing State v. King, 82 Wis. 2d 124, 130, 262 N.W.2d 80 (1978)). "The purge conditions imposed by the court must be feasible ***and*** must be reasonably related to the cause or nature of the contempt." *See V.J.H. v. C.A.B.*, 163 Wis. 2d 833, 845, 472 N.W.2d 839 (Ct. App. 1991) (citing *Larson v. Larson*, 159 Wis. 2d 672, 465 N.W.2d 225 (Ct. App. 1990)) (emphasis in original).

B. Requirements For Enjoining Harassing Conduct In Injunctive Proceedings.

Under Wis. Stat. § 813.125 a court has the authority to enjoin harassing behavior. However, only those "acts or conduct which are proven at trial and form the basis of the judge's finding of harassment or substantially similar conduct should be enjoined." *See Bachowski v. Salamone*, 139 Wis. 2d

397, 415, 407 N.W.2d 533 (1987). Moreover, a court improperly applies the harassment injunction statute when it drafts an injunction so broad that it unreasonably restrains constitutionally protected conduct. *Id.*

C. This Court Has Recognized The Irreparable Injury Caused By Loss Of First Amendment Freedoms.

> **"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury".**

See Elrod v. Burns, 427 U.S. 347, 373-74 (1976).

In sum, regardless of whether an order is setting a civil contempt purge condition or an order enjoining harassing conduct, the court must narrowly tailor any restrictions on Petitioner's otherwise lawful activities to proscribe only that conduct underlying the need for the order. This is especially true when the order suspends the exercise of a fundamental right.

Stated below, Petitioner accommodates perspective on the fundamental rights of travel (freedom of movement) and freedom of association.

This Court's "Penumbra Doctrine" supports that although certain rights not specifically stated within the context of the Constitution have come to be recognized as fundamental rights that are protected by provisions of the Constitution that may not be impermissively infringed upon by the powers of the government. The peripheral, yet, still characterized as fundamental rights that relate to this instant case; are the right to travel (freedom of movement) and the right to freedom of association.

The right to interstate travel "is a right that has been firmly established and repeatedly recognized" *See United States v. Guest*, 383 U.S. 745 (1966).

The right to intrastate travel is fundamental among the liberties preserved by the Wisconsin Constitution, and includes the right to move freely

while driving one's automobile. *See Brandmiller v. Arreola*, 199 Wis. 2d 528, 544 N.W.2d 894 (1996). "This right to be free to move about within one's own state is inherent and distinct from the right to interstate travel." *See City of Milwaukee v. K.F.*, 145 Wis. 2d 24, 42, 426 N.W.2d 329 (1988).

In addition to the right to travel (freedom of movement), Petitioner has a right to associate with her elderly mother, who as noted in the court record, resides in Walworth County. This Court has made it clear that while it does not recognize "a generalized right of social association," it nevertheless recognizes two types of associations that are entitled to First Amendment protection. *See Dallas v. Stanglin*, 490 U.S. 19, 25 (1989). The two kinds of association are those with an "intrinsic" or "intimate" value, and those that are instrumental to forms of religious and political expression and activity. The former type of association is at issue here.

Of this type of association, this Court has said that it is "central to any concept of liberty" and is exemplified by personal affiliations that "attend the creation and sustenance of a family-marriage ...; the raising and education of children; and cohabitation with one's relatives." *See Robert v. United States Jaycees*, 468 U.S. 609, 619 (1984). Such affiliations "involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life." *Id.* at 620.

Thus, any consideration of the court's ordered banishment sanction must begin with the proposition that Petitioner has a fundamental right to travel (freedom of movement) throughout Walworth County and also has a fundamental right to associate with her mother, who resides within Walworth County. Petitioner understands that the right to travel (freedom

of movement) and right of association are not absolute. However, any proscription on Petitioner's right to be in and travel through Walworth County must be considered under the stringent standard used when a First Amendment right is suspended by a judicial decree, "burdens no more ... than necessary to serve a significant governmental interest". Petitioner has conceded in her briefing to the Court of Appeals that the conduct found by the circuit court is very serious and would warrant a reasonable geographic restriction on Petitioner's right to travel. What Petitioner is at odds with, is the disproportionate relief in relation to the lawless conduct found by the circuit court. Petitioner suggested in her briefing to the Court of Appeals that a buffer zone of, say, 300 yards, would be any less effective than permanent banishment from the county in providing the respondents complete relief without unduly infringing upon Petitioner's constitutional

liberties. Therefore, banishing Petitioner from permanently from Walworth County is, plainly, unnecessary and unreasonable.

Certiorari should be granted so that this Court may balance the competing interests of justice of all parties on the one hand, and the constitutionality of irreparable injury to be suffered on the other.

II. THE WISCONSIN COURT OF APPEALS SO SCANTILY EXAMINED IT'S CASE PRECEDENT IN SUPPORT OF ITS DECISION, THAT IT SHOULD INVOKE THIS COURT TO FURTHER DELIBERATE THE CONSTITUTIONALITY OF PETITIONER'S BANISHMENT FROM WALWORTH COUNTY WISCONSIN, AS IS, A NOVEL USE OF A MEDIEVAL PUNISHMENT IN THE CIVIL REALM ENFORCED BY JUDICIAL DECREES.

There is ***no*** case precedent that justifies banishment of Petitioner from Walworth County ***permanently*** in a civil context when allegedly; the lawless conduct was allegedly limited to a small

geographic area of Delavan, Wisconsin. The case precedent that was cited by the Court of Appeals in support of its decision was a criminal case that did not bring up the constitutionality of banishment as a sentencing condition of probation from the city of Cedarburg, appropriately on appeal. *See State v. Nienhart*, 196 Wis. 2d, 161, 169, 537, N.W.2d 123 (Ct. App1995). Appeal from the banishment sanction, was the only argument brought up before the Court of Appeals by this instant case.

Petitioner was raised and educated in Walworth County, and Petitioner's elderly mother continues to live there to this very day. The Court of Appeals has indeed trivialized Petitioner's deeply rooted bond to Walworth County by comparing this instant case to *Nienhart*, where the only connection to the proscribed geographic region was the occasional purchase of cigarettes.

After undertaking a brief comparison case analysis, it is quite evident; that the only relation there is between these two cases is that they are Wisconsin cases which were borne from alleged harassing conduct, and where banishment was issued in a court proceeding.

A. Even If Case Precedent, Hypothetically, Was Squarely On All Fours With This Instant Case, Trial Court Conclusions Still Should Be Reviewed In Light Of A Harsh Sanction As Permanent Banishment From A County, Especially When A Choice To Continue With Equitable Relief Over Available Legal Relief Presents Itself.

In this instant case, absent alleged lawless conduct in the court record by Petitioner anywhere else in Walworth County, with the exception of a limited geographic area of Delavan, Wisconsin, fails to serve the significant government interests and respondents' right to privacy arguments relied on by the Court of Appeals. Justice Scalia's opinion

dissenting in part in *Madsen v. Women's Health Center, Inc.* articulated his disfavor when lower court practice sustains injunctive relief of the trial court without further independent review, which speaks directly to this instant case.

> " ... and the practice of accepting trial court conclusions permitting injunctions without considering whether those conclusions are supported by any finding of fact ..."

See Madsen v. Women's Health Center Inc., 512 U.S. 753 (1994).

There are criminal laws already in place that protect society as a whole from violent conduct, so the curtailment of Petitioner's freedom of movement more than necessary for fear of violent conduct stemming from past alleged violent conduct is, plainly, unnecessary.

A generalized, understood, standard of selecting a legal remedy applies here ... *inadequacy of existing legal relief is the only grounds for using equitable relief.*

Certiorari should be granted to review the over-extension of equitable relief in allowance of a severe sanction to be used in a novel fashion, when there is no case precedent to lend support, and no independent review of trial court conclusions to ascertain appropriateness of the sanction, when scrutinized by findings of fact in the court record.

III. THIS INSTANT CASE'S UNUSUALNESS SHOULD BE MEASURED AND TEMPERED AGAINST THE FACT THAT IT HAS RECENTLY BEEN CITED AS PART OF CASELAW AUTHORITY APPROVING OF REGIONAL BANISHMENT IN A CRIMINAL CASE.

As recent as July 1, 2003, this case has been used as part of case precedent in a criminal matter banning a convicted felon from a two-mile square area as a condition of parole. The decision of the Court of Appeals is unpublished. *See State of Wisconsin v. Christopher C. Johnson*, Appeal No: 02-2778.

CONCLUSION

For all of the foregoing reasons, the Petition for Writ of Certiorari should be, in all respects, granted.

Dated this 9th day of September, 2003.

Respectfully submitted,

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2003 WI App 46

COURT OF APPEALS OF WISCONSIN
PUBLISHED OPINION

_Petition for review

NO. 02-0503

PAMELA S. PREDICK AND GEORGE PREDICK,
PLAINTIFFS-RESPONDENTS

v.

MARGARET O'CONNOR,
DEFENDANT-APPELLANT.

NO. 02-0504

TINA M. BUSCH,
PETITIONER-RESPONDENT,

v.

MARGARET O'CONNOR,
RESPONDENT-APPELLANT.

COURT OF APPEALS
DECISION
DATED AND FILED

January 22, 2002

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE
This opinion is subject to further editing if published, the official version will appear in the bound volume of the Official Reports

A party may file with the supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62

Appeal Nos. 02-0503
02-0504

Cir. Ct. Nos.. 97CV735
01CV857

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

NO. 02-0503

PAMELA S. PREDICK AND GEORGE PREDICK,
PLAINTIFFS-RESPONDENTS

v.

MARGARET O'CONNOR,
DEFENDANT-APPELLANT.

NO. 02-0504

TINA M. BUSCH,
PETITIONER-RESPONDENT,

v.

MARGARET O'CONNOR,
RESPONDENT-APPELLANT.

Opinion Filed:	January 22, 2003
Submitted on Briefs:	October 28, 2002
JUDGES:	Nettesheim, P.J., Brown and Anderson, J.J.
Concurred:	Anderson, J.
Dissented:	
Appellant ATTORNEYS:	On behalf of the defendant-appellant and the respondent-appellant Margaret O'Connor, the cause was submitted on the briefs of *Raymond D. Jamieson* of *Cook & Franke S.C.* of Milwaukee and *Micabil Diaz* of the *American Civil Liberties Union of Wisconsin Foundation.*
Respondent ATTORNEYS:	On behalf of the petitioner-respondent Tina M. Busch and the plaintiffs-respondents Pamela S. Predick and George Predick, the cause was submitted on the briefs of *Thomas J. McClure of McClure Law Offices S.C.* of Delafield.

APPEAL from orders of the circuit court for Walworth County: ROBERT J. KENNEDY, Judge. *Affirmed.*

Before Nettesheim, P.J., Brown and Anderson, JJ.

¶1 BROWN, J. At first blush, an order banishing a person from a county seems like it was taken from the script of some old Grade-B cowboy movie where the sheriff tells the bad guy to "get out of Dodge." The knee-jerk reaction is that this kind of order is arbitrary at the very least and an invasion of a person's constitutional right to travel at the most. When applied to the facts in these two harassment actions, however, the orders make a lot of sense. Margaret O'Connor twice used her automobile as a dangerous weapon, once running Tina M. Busch off the road while Tina was driving both her daughter and

Pamela and George Predick's daughter to soccer practice, and once attempting to "side swipe" Pamela while Pamela was jogging.[1] Margaret has been stalking these people for a decade and has ignored previous orders to cease and desist from her behavior. She has expressed no remorse and exhibits no inclination to discontinue her dangerous fixation on the people she torments. The trial court determined that because of O'Connor's past utter disregard for less intrusive orders and because of her use of a vehicle as a dangerous weapon, O'Connor's victims needed a "zone of protection." We hold that banishment from Walworth County was a proper exercise of discretion because it may finally keep the tormentor at bay. We affirm.

¶2 While the salient facts of this case revolve around the two instances in which Margaret used her

---

[1] We note that there are three victims in this case, two of whom are married and share the same last name. We will refer to the parties by their first names for the sake of clarity.

vehicle to harass Tina and Pamela, we set forth in detail the factual history of this case in order to demonstrate how the trial court has attempted to implement more narrowly tailored orders and why they have failed to prevent Margaret's continuous harassment. The facts of this case stretch back to approximately 1991 when Pamela and Margaret, whose mother lives across the street from the Predicks in the City of Delavan, became neighbors and acquaintances. At her deposition in 1998, Pamela testified that sometime after the parties became acquainted and had socialized on a few occasions, Margaret began to call and harass her, her family and many of her friends several times during both day and nighttime hours. Pamela also testified that on at least one occasion Margaret had approached and pushed her in front of one of her children. In her deposition, Margaret justified her past actions by claiming that she and Pamela had been in a romantic relationship.[2]

---

[2] [Footnote is continued on the next page]. We note that the

According to Pamela's testimony, Margaret's actions resulted in a two-year restraining order being issued against Margaret in 1994.

¶3 Pamela also testified at her deposition, and then again at a later hearing, that sometime in 1995 she had gone jogging and a car driven by Margaret came at her in a high rate of speed such that she was forced to jump off to the side of the road to avoid getting hit. Pamela stated that Margaret then slammed on the brakes, exited the vehicle and reached into the rear of the car. Pamela testified that she feared for her safety and she had to run as fast as she could in order to get away. At the hearing, Margaret denied running Pamela off the road and testified that all she had done that day was pass by her in her car.

---

trial court determined that it was unlikely that such a relationship existed between Pamela and Margaret. Further, we point out that the existence of the relationship is irrelevant for our purposes, as it would not have entitled Margaret to consistently harass Pamela and her family.

¶4 In 1997, after the expiration of the first restraining order, the Predicks commenced another action against Margaret, seeking a second harassment injunction. The parties entered into a stipulation and order pursuant to which the trial court issued a harassment injunction against Margaret. In December 1997, the Predicks filed a complaint alleging defamation and intentional infliction of emotional distress and asserting a claim for punitive damages.[3] The Predicks alleged that Margaret had continued to harass them by both telephoning and threatening them, their friends, their family and their co-workers during all hours of the day and night. Margaret admitted making the calls to Pamela's co-workers and to contacting the Predicks, but denied contacting Pamela's family and making many of the alleged

---

[3] The Predicks later amended their complaint in 1998, changing the first count from defamation to libel and slander.

statements. Margaret once again justified her conduct by asserting that at one time Pamela had initiated an intimate relationship with her.

¶5 In 1999, the parties resolved the dispute by entering into a stipulation and order imposing a permanent injunction on both parties. The stipulation and order required the Predicks to refrain from contacting, harassing or interfering with the lives of Margaret and her mother. The stipulation and order further required Margaret to pay the Predicks $4000 and barred her from, inter alia, contacting, harassing and interfering with the Predicks, members of their family, and their medical providers, utility companies and co-workers.[4] The agreement was to extend throughout Margaret's lifetime and provided that if she violated the agreement, the court could impose a

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[4] In their complaint, the Predicks alleged that Margaret had contacted Pamela's doctor and co-workers at her business, and after gaining access to the Predicks' telephone billing records, had made a series of phone calls to their family and friends.

fine of up to $1000 and imprisonment not exceeding ninety days.[5]

¶6 In the fall of 2000, the Predicks filed several pleadings with the trial court, alleging that Margaret had not complied with the 1999 stipulation and order.

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[5] The agreement, in pertinent part, read as follows:

> 8. Upon approval of the Court, [Margaret] shall be enjoined and restrained from doing any of the following actions for the purpose of contacting, harassing or interfering in any way with the Predicks:
>
> a. Having any contact with the Predicks, including [the enumerated family members], in any fashion, including but not limited to, by telephone, by letter or in person at their homes or the family members' homes, at school and/or at places of employment.
>
> b. Contacting the Predicks and [the enumerated family members], physicians or medical personnel of any kind or nature whatsoever, current and future places of employment, including, but not limited to, S. Abraham & Sons and Burr Oak Manor.
>
> c. Contacting directly or indirectly any utility service, telephone service, mail delivery and other similar services of the Predicks or [the enumerated family members], except as to a party's own particular account with these institutions.
>
> d. Stalking, spying or harassing the Predicks or [the enumerated family members].

In August 2001, the trial court found Margaret in contempt of court for violating the stipulation and order by intentionally threatening in a telephone conversation with the Predicks' attorney that she would have video surveillance conducted against the Predicks and by contacting an acquaintance of both the Predicks and Margaret and inferring in the conversation that the "Predicks were in trouble." The court further found that the phone calls served no legitimate purpose and were meant to harass the Predicks. The court ordered Margaret to serve ninety days in jail, but gave her the opportunity to purge the contempt. According to the purge conditions, Margaret was to: (1) pay $2000 to the Predicks, (2) have absolutely no future contact with the Predicks, (3) comply with all prior court orders in place, and (4) not call anyone or mention the Predicks' names to anyone other than her counsel. The court then added penalties for noncompliance.

¶7 In October 2001, the Predicks filed an order to show cause, alleging that Margaret was in contempt of the order. After a hearing on the matter, the court concluded that Margaret had violated the order for two reasons. First, the court found that Margaret had violated the previous orders barring contact with members of the Predick family. The court found that Margaret, in her rental car, had followed Tina, who at the time was driving her daughter and the Predicks' daughter to soccer practice. The court found that Margaret drove up to Tina's car and gesticulated and yelled obscenities at her, scaring everyone in the car. The court further found that in an attempt to drive Tina off the road, Margaret had forced her into the oncoming lane of traffic, endangering all of the passengers in the vehicle. We note that in a prior hearing the court had observed that Margaret had chosen to harass Tina because she had become

convinced, in the absence of any evidence, that Pamela and Tina were lovers and consequently had come to view Tina as a rival for Pamela's affections. Second, the court found that Margaret had on numerous occasions violated the purge conditions in the August 2001 order, which barred her from uttering the Predicks' names in the presence of anyone other than her counsel, by leaving numerous after-hours voice messages of an unreasonable and harassing nature on the office voicemail of the Predicks' counsel. The court further found that the calls were abusive and Margaret used personally derogatory language toward the Predicks and their counsel. The court counted 141 times that Margaret had mentioned the Predicks in the voice messages. According to the court, the calls bore no resemblance to the reasonable pursuit of her case. The court then imposed remedial sanctions and additional purge conditions, among them a condition prohibiting

Margaret from entering Walworth County. Margaret then filed a motion to modify the purge conditions, which the court subsequently denied.

¶8 In October 2001, in response to the incident in which Margaret allegedly attempted to drive her off the road, Tina, who is Pamela's business partner, also filed a petition for a harassment injunction against Margaret pursuant to WIS. STAT. § 813.125 (1999-2000).[6] Margaret failed to appear, and, based upon the testimony given in the Predicks' case, the court granted Tina a default judgment against Margaret and an injunction prohibiting Margaret from entering Walworth County, with limited exceptions for court appearances. The court ordered that Margaret have "no contact of any type at any place petitioner(s) may be. No contact through any third person of petitioner(s) on behalf of respondent. Court also will

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[6] All references are to the 1999-2000 version of the Wisconsin Statutes unless otherwise noted.

order her (respondent) not to be in Walworth County unless she is here for a court appearance or on her way to court." The court denied Margaret's subsequent motion to reconsider the civil injunction.

¶9 Margaret appeals from the trial court orders from both of the cases prohibiting her from entering Walworth County and denying her motions for reconsideration. These appeals were consolidated and we address them both here.

¶10 This appeal requires us to apply a two-part standard of review. Whether the trial court's orders violated Margaret's constitutional rights is a question of law. We review questions of law without deference to the decisions of the lower court. ***Ball v. Dist. No. 4, Area Bd. of Vocational, Technical and Adult Educ.***, 117 Wis. 2d 529, 537, 345 N.W.2d 389 (1984). However, we will not overturn the trial

court's findings of fact in either of the proceedings unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2).

¶11 Margaret seems to argue that banishment is a per se violation of constitutional rights and that a court should not have the authority to impose it. She cites to numerous cases from other jurisdictions that at first glance would appear to hold that banishment is presumptively invalid. While as a matter of course we do not normally engage in a lengthy discussion of cases from foreign jurisdictions, we believe it is important to do so here. A closer inspection of the facts and circumstances of the cases will reveal why the courts in fact chose to invalidate the banishment conditions before them.

¶12 In several of the cases, the courts determined that while they might have the authority to banish an

individual from a geographic area, the facts and circumstances of the case did not support the imposition of the restriction. In ***State v. Doran***, 95 Wash. App. 1068, 1999 WL 350657 (Wash. App. Div. 1) (per curiam),[7] for example, a case Margaret discusses at length, Doran was convicted of telephone harassment and violating a protection order in place against him. ***Id.*** at 1. As a condition of his sentence, the trial court ordered him to leave the county upon his release from prison. ***Id.*** The court of appeals determined that the record did not demonstrate that Doran's conduct, i.e., telephone harassment, and the victim's activities within the county, justified a countywide ban. ***Id.*** at 3. However, the court refused to rule out the possibility that in some circumstances a

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[7] We note that in this opinion we do cite to two unpublished opinions from other states. WISCONSIN STAT. § 809.23(3) does not prohibit us from doing so. In ***Brandt v. LIRC***, 160 Wis. 2d 353, 466 N.W.2d 673 (Ct. App. 1991), *aff'd*, 166 Wis. 2d 623, 480 N.W.2d 494 (1992), we held that the rule does not proscribe citation to circuit court decisions, noting "the statutory scenario of chapter 809 concerns appellate procedure generally and ... Rule 809.23(3), *read in context*, concerns only court of appeals decisions." ***Brandt***, 160 Wis. 2d at 363.

countywide prohibition would be appropriate, noting that relying on the well-defined boundaries of a county or city would foster uniform enforcement of such a restriction. ***Id.***

¶13 In ***Johnson v. State***, 672 S.W.2d 621, 623 (Tex. Ct. App. 1984), the court concluded that banishing Johnson from his county of residence as a condition of his probation was not reasonably related to his rehabilitation when banishment would leave him unsupervised by his probation officer, broke and unemployed. ***Id.*** In a similar vein, in ***Jones v. State***, 727 P.2d 6, 8-9 (Alaska Ct. App. 1986), the court vacated a probation condition prohibiting Jones from being within a forty-five block area as not being reasonably related to his rehabilitation. The court determined that the trial court had not given a reason why, in light of the fact that the forty-five block area included both Johnson's work location and residence,

it had imposed such a harsh condition. ***Id.*** at 9. In ***McCreary v. State***, 582 So. 2d 425, 427-28 (Miss. 1991), the court struck down a condition essentially banishing McCreary, who was convicted of sexual assault, from the State of Mississippi, concluding that on the facts available, the condition was also wholly unrelated to McCreary's rehabilitation. ***Id.*** The court acknowledged that in another case it had upheld a condition prohibiting an individual from coming within125 miles of a county, see ***Cobb v. State***, 437 So. 2d 1218 (Miss. 1983), but stated that it was concerned about the public policy implications of dumping convicts on another state. ***McCreary***, 582 So. 2d at 427-28. Further, in ***In re White***, 97 Cal. App. 3d 141 (Cal. Ct. App. 1979), the court struck down a probation condition banishing White, who was convicted of soliciting an act of prostitution, from certain high-prostitution areas during all hours of the day and night. ***Id.*** at 147. The court could not see

how sweeping prohibition was reasonably related to White's past or future criminality when White's criminal conduct took place at a time of darkness and the evil to be eliminated by the criminal statute, i.e., streetwalking, was more prevalent in the later hours of the day. ***Id.*** at 147-48.

¶14 We acknowledge that several of the cases contain language suggesting that banishment is impermissible, but conclude that these cases either must be limited to their facts or have been modified by subsequent decisions. For example, the court in ***In re Mannino***, 14 Cal. App. 3d 953 (Cal. Ct. App. 1971), concluded that banishment was a prohibited term of probation. ***Id.*** at 965. There, the court invalidated a condition prohibiting a student, who was convicted of assault for kicking a student and resisting police officers at an anti-war demonstration, from entering the grounds of any school in which he

was not enrolled. ***Id.*** at 957 n.2, 962. We observe that in a subsequent unpublished case, the court limited ***Mannino*** to its facts and upheld an order imposing a similar banishment condition. *See* ***State v. Fred S.***, 2002 WL 1925124, 1 (Cal. App. 2 Dist.).

¶15 While in ***Bird v. State***, 190 A.2d 804, 807 (Md. Ct. App. 1963), the court did not hold that suspension of a sentence conditioned on banishment was beyond the power of the trial court, the conclusion must be read in context of the drastic nature of the banishment condition in that case. The trial court there had banished Bird to Puerto Rico for ten years. ***Id.*** at 805. Thus, the banishment condition amounted to more than a minor burden on Bird's rights to travel and association. It was, in fact, the equivalent of deporting Bird to another country. Similarly, in ***Silva v. Babak S.***, 22 Cal. Rptr. 2d 893 (Cal. Ct. App. 1993), the court vacated a trial court

order requiring Babak S., a juvenile, to live with his parents in Iran for two years, concluding that it constituted a de facto deportation. *Id.* at 895, 898.

¶16 Although in *State ex rel. Halverson v. Young*, 154 N.W.2d 699, 702 (Minn. 1967), the Minnesota Supreme Court did declare that courts did not have the power to impose banishment as a condition of probation, more recently, in *State v. Franklin*, 604 N.W.2d 79, 82 (Minn. 2000), the court seemed to modify the earlier ruling and concluded that as a general rule courts did have the authority to impose geographical limitations. In fact, the court explicitly acknowledged that the probation condition in the case—banishment from the city of Minneapolis—was not presumptively invalid. *Id.* at 84. While the court did strike down that condition, it did so because it determined that the source of Franklin's criminal behavior, criminal trespass, was centered on one

individual home, which was located mere blocks from the southern border of Minneapolis and miles from the northern border. *Id.* at 83-84.

¶17 Finally, we note that in a case neither party cites, this court upheld a banishment condition. *See* ***State v. Nienhardt***, 196 Wis. 2d 161, 164-65, 537 N.W.2d 123 (Ct. App. 1995). In that case, Nienhardt was convicted of unlawful use of a telephone; however, evidence at a sentencing hearing demonstrated that she had engaged in a persistent pattern of harassing phone calls in addition to those underlying the conviction and that she had been observed both spying on and following the victim. *Id.* As a condition of her probation, the trial court banished Nienhardt from the city of Cedarburg. *Id.* at 166. On appeal, Nienhardt had argued that the condition violated her constitutional rights. *Id.* at 168. While we did not specifically address each of

Nienhardt's constitutional claims, we did conclude that based on the particular circumstances of the case and the trial court's findings that Nienhardt did not live in Cedarburg and only traveled there to purchase cigarettes, the condition banishing Nienhardt from Cedarburg was not overbroad or unduly restrictive of her right to travel. *Id.* at 168-70.

¶18 Thus, banishment is not a per se constitutional violation. As the previous discussion demonstrates, there is no exact formula for determining whether a geographic restriction is narrowly tailored. Each case must be analyzed on its own facts, circumstances and total atmosphere to determine whether the geographic restriction is narrowly drawn.

¶19 We therefore turn to the facts of this case. Here, we have an individual who has twice used a vehicle as a dangerous weapon in Walworth County

and who has repeatedly demonstrated that a standard, more narrowly tailored, order will not deter her from harassing and endangering the lives of three innocent victims and their families, all of whom live in the county. The evidence in the record demonstrates that while she does not live or work in the county, Margaret frequently rents cars to drive around Walworth County. Further, her statements on the record indicate an absolute fixation on Tina and Pamela and an unwillingness to accept any possibility other than that she has been wronged and has a right to follow, threaten, harass and endanger these two women and their families. In fact, the trial court found that if Margaret were even in Walworth County, she would be tempted to prey upon her victims. Hence, Margaret poses a constant and dangerous threat any time she is present in the county.

¶20 Here, we also have three people who, as the record evidences, are victims for no apparent reason and have been driven to desperation by Margaret's continuous harassment. These innocent victims deserve to be able to live their lives free from the constant fear of being tormented and attacked. The geographic restriction the trial court imposed will provide them with a margin of territorial safety in which they can live in peace.

¶21 Margaret asserts that there is no basis in the record for concluding that a "keep away" zone of 300 yards would be any less effective than total banishment from the county in ending the harassment. Margaret's use of a car as a tool for tormenting Tina, Pamela and George makes her too mobile and too dangerous for such a limited restriction. An area smaller than the county would provide her with too many opportunities to meet up with her victims, who,

as we have noted, live and work in that area. Further, in the event that she does violate the orders and enter Walworth County, relying on the county's boundaries will give area law enforcement the opportunity to apprehend her before she is able to threaten or, worse, seriously injure Tina, Pamela, George and other members of their families. Thus, the injunction and purge condition are properly tailored to prohibit any future harassment and do not unduly impinge on Margaret's constitutionally protected activities. Accordingly, we affirm the orders of the trial court banishing Margaret from Walworth County.

By the Court.-Orders affirmed.

Nos. 02-0503 (C)
02-0504 (C)

¶22 ANDERSON, J. (*concurring*). At first blush, a court order banishing Margaret O'Connor from Walworth County and preventing her from visiting

her mother appears to be overbroad and an infringement on her constitutional right to travel. I join in the majority opinion but write separately to make clear that both Margaret's dangerous behavior and the need to protect victim's constitutional rights provide grounds for the order of banishment.

¶23 In considering the banishment order in the injunction granted Tina, the guiding principle is that a harassment injunction must be narrowly tailored to prohibit only the proven acts of harassment and to avoid improperly impinging upon constitutionally protected behavior. *See* ***Bachowski v. Salamone***, 139 Wis. 2d 397, 414, 407 N.W.2d 533 (1987). And, the banishment order as a purge condition in the civil contempt involving the Predicks must meet the same standards. ***State ex rel. V.J.H. v. C.A.B.,*** 163 Wis. 2d 833, 845, 472 N.W.2d 839 (Ct. App. 1991) (purge

conditions must be "feasible *and* must be reasonably related to the cause or nature of the contempt").

¶24 There is no doubt that the banishment order is meant to control conduct that Margaret has engaged in. The record includes evidence that at least on two occasions Margaret used an automobile to harass and physically assault the victims. At the hearings, the Predicks and Tina established that Margaret used an automobile to endanger Tina, her daughter and the Predicks' daughter. Margaret attempted to drive Tina off the road and succeeded in forcing Tina into the oncoming lane of traffic. Majority at ¶7. Pamela also testified that on an earlier occasion, Margaret had driven a car at her at a high rate of speed, forcing Pamela to jump off the side of the road. Majority at ¶3.

¶25 The use of an automobile as a weapon to harass and possibly injure others is a dangerous

behavior that must be prevented. And, when such behavior is part of ongoing stalking, it becomes even more ominous. Stalking is a gender-neutral crime, Jennifer A. Hueter, Note & Comment, *Lifesaving Legislation: But Will The Washington Stalking Law Survive Constitutional Scrutiny?*, 72 WASH. L. REV. 213, 215 (Jan. 1997); and, as in this case, the stalker can be a woman known to the victims,[8] Carol E.

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[8] [Footnote continues to the next page]. At least four distinct categories of stalkers have been recognized. A stalker who suffers from delusional erotomania truly believes that the victim, who may not even know of the stalker's existence, is in love with him. This type of stalker usually attempts to establish an intimate relationship with his victim through verbal, written, or physical contact, and believes that his victim reciprocates his desire for a relationship despite the absence of any actual reciprocity. Unlike a delusional erotomaniac, a stalker suffering from borderline erotomania knows that his victim does not reciprocate his feelings. However, this type of stalker may express intense fury when his victim does not develop reciprocal feelings. Borderline erotomaniacs usually have had some emotional involvement with the victim, although even an innocent glance may trigger the stalker. Borderline erotomaniacs often exhibit the same stalking behavior as a delusional erotomaniacs: continually writing letters, making telephone calls, sending gifts, and following their victims. The third type of stalker is the "former intimate" stalker. Unlike the delusional or borderline erotomaniac, the former intimate stalker has had an intimate relationship with his victim. A former intimate stalker typically has a history of abusive relationships; many cases involving this type of stalker result in assault or death. A former intimate stalker is profoundly emotionally dependent on his former partner and exhibits a strong need to control her; he "is unable to tolerate the panic and 'abandonment

Jordan et al., *Stalking: Cultural, Clinical and Legal Considerations*, 38 BRANDEIS L.J. 513, 533 (Spring, 2000).

¶26 Stalking is not a benign behavior, "[s]talking is typically an escalating behavior. Without proper intervention, a stalker's behavior becomes increasingly disturbing over time and [she] becomes more dangerous to [her] victim. Physical attacks usually follow months of harassing, following, or threatening, and repeated violations of civil protection orders." Jennifer L. Brafield, Note, *Anti-Stalking Laws: Do They Adequately Protect Stalking Victims?*, 21 HARV. WOMEN'S L.J. 229, 235-36 (Spring, 1998) (footnote omitted). Almost one-half of

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anxiety' that result when his partner leaves the relationship." Finally, the sociopathic stalker differs from the other three types in two distinct ways: he does not try to establish an intimate relationship with his victim and he looks for specific, pre-defined criteria in a victim.

Jennifer L. Bradfield, Note, *Anti-Stalking Laws: Do They Adequately Protect Stalking Victims?*, 21 HARV. WOMEN'S L.J. 229, 236 n.26 (Spring, 1998) (citations omitted).

all victims report that their stalkers directly threaten them. Patricia Tjadean & Nancy Thoennes, *Stalking in America: Findings From the National Violence Against Women Survey,* NATIONAL INSTITUTE OF JUSTICE AND CENTERS FOR DISEASE CONTROL AND PREVENTION, Research in Brief at 7-8, exhibit 12 (April 1998), *at* http://www.ncjrs.org/pdffiles/169592.pdf. The NIJCDC study found that there is a strong link between stalking and other forms of violence in intimate relationships. ***Id.*** at 2.

¶27 Victims do not just suffer physical injuries from stalking, "Stalking victims suffer profound, long-term emotional injuries at the hands of their stalkers. Many stalking victims experience depression, generalized anxiety, obsessive-compulsive behaviors, and even symptoms of post-traumatic stress disorder. A number of victims lose

time from work, while some never return to work." Bradfield, *supra* ¶26, at 232 (footnote omitted). Some victims also report that the stalking caused their personalities to change and they experienced feeling paranoid, being easily frightened, more aggressive and less trusting. Jordan, *supra* ¶25, at 534.

¶28 There can be no doubt that Margaret's use of an automobile in an attempt to run Pamela, her daughter and Tina off the road is an escalating act of violence that the court is required to directly address and fashion effective protection for the victims. The court, obviously frustrated by Margaret's repeated violations of the injunction issued to prevent the harassment of the Predicks,[9] chose to create a zone of

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[9] The existence of an injunction does not guarantee protection for the victim; close to seventy percent of all protective orders are violated by the stalker. Patricia Tjadean & Nancy Thoennes, *Stalking In America: Findings From the National Violence Against Women Survey*, NATIONAL INSTITUTE OF JUSTICE AND CENTERS FOR DISEASE CONTROL AND PREVENTION, Research in Brief at 12, exhibit 20 (April 1998), *at* http://www.ncjrs.org/pdffiles/169592.pdf.

safety for the victims by banishing Margaret from the county.

¶29 It is this geographical banishment that Margaret challenges. She is correct that

> [t]he freedom to move about is a basic right of citizens under our form of government, in fact, under any system of ordered liberty worth the name. It was not added to United States Constitution by the enactment of the first ten amendments. It is inherent, not only in the Bill of Rights, but in the original document itself. It has properly been termed "engrained in our history" and "a part of our heritage."

Ervin v. State, 41 Wis. 2d 194, 200-01 163 N.W.2d 207 (1968). Although, Margaret does not mention it, Wisconsin also recognizes a constitutional right of intrastate travel:

> [T]ransitory movement within a community is a constitutionally guaranteed right—the right of freedom of movement. The inherent right of freedom of movement involves the freedom to move about on the sidewalks and streets of a community. This right to freely move about one's community is separate and distinct from the right to interstate travel.

Brandmiller v. Arreola, 189 Wis. 2d 215, 225, 525 N.W.2d 353 (Ct. App. 1994) (citation omitted), *aff'd*, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).

¶30 Margaret fails to acknowledge that the victims also have a constitutional right to travel and that right includes the right to move freely about the sidewalks and streets of the community. *See Id.* When private citizens have competing constitutional rights, it is the duty of the court to achieve a balance between the exercise of those rights, vis-à-vis each individual asserting the constitutional right and the citizenry as a whole. Here, the court had to balance Margaret's right to travel throughout Walworth County against the rights of the victims to move freely and safely throughout Walworth County. In achieving that balance, the court properly considered that on two occasions Margaret had misused the constitutional right to travel by attempting to run the victims off the

road. The court also properly considered the safety of all who travel in Walworth County. Because Margaret had endangered others while exercising her right to travel, the court appropriately concluded that to ensure the victims and the citizenry as a whole could freely and safely travel within Walworth County, Margaret had to be banished from the county.

¶31 Margaret also fails to acknowledge that another of the victims' constitutional rights is implicated—the right to privacy. This right discussed as early as 1928 by Justice Brandeis, who referred to it as "the right to be let alone—the most comprehensive of rights and the right most valued by civilized men." ***Olmstead v. United States***, 431 U.S. 678, 684 (1928) (Brandeis, J., dissenting).

¶32 How the right to privacy interplays with the right to travel was explained by the Washington

Supreme Court in ***State v. Lee***, 957 P.2d 741 (Wash. 1998). That case involved a challenge that the State's stalking law was overbroad because it potentially infringed on the right to walk or wander in the community. ***Id.*** at 751. While the Washington Supreme Court's opinion related to the constitutionality of a statute, its analysis can easily be adopted when considering Margaret's overbreath challenge to the terms of the harassment injunction and to the terms of the purge condition. The Washington Supreme Court acknowledged that the right to travel is a basic right under the United States Constitution and a state law's primary objective cannot be to impede the right to travel. ***Id.*** The court then observed, "There is an acknowledged constitutional right to be free from governmental interference, but the United States Constitution does not create a right for any person to interfere with the rights of other persons." ***Id.*** at 751-52.

¶33 The Washington Supreme Court then turned to the right to privacy:

> The United States Supreme Court has recognized the "right of privacy" may be created by specific constitutional guaranties although the "right of privacy" does not exist in any specific provision of the United States Constitution ... Personal rights found in the guaranty of privacy are fundamental to or implicit in the concept of ordered liberty. If the right of privacy offers any protection, that protection must include the right to be left alone.
>
> In the case of stalking, as evidenced by these cases, the State has a legitimate interest in restraining harmful conduct. It may do so under police powers. Individuals have a constitutional right to move about as long as they are not committing a crime. The stalking statute ... does not interfere with one's legitimate freedom of movement or right to travel, but applies to conduct between two or more persons when one wishes to be left alone and to be free of interference by the other. The statute is a reasonable exercise of the police powers in protecting privacy interests of a segment of society from invasive oppressive behavior and harmful conduct. One person's freedom of movement gives way to another person's freedom not to be disturbed.

Id. at 752-53 (footnotes omitted).

¶34 Likewise, in this case, the harassment injunction and purge condition are meant to control Margaret's conduct toward the victims who wish to be left alone and to be free to travel openly and safely on the streets of Walworth County. Because Margaret has proven that she is an imminent danger to the victims, when she is in Walworth County her right to travel must give way to the victims' freedoms to travel and to be left alone. The only alternative to the court was to create a zone of safety by banishing Margaret from Walworth County.

STATE OF WISCONSIN	CIRCUIT COURT	WALWORTH COUNTY

Petitioner: TINA M. BUSCH (R.J.K.)[1]
and IMMEDIATE FAMILY,

Date of Birth: 4-4-62

-VS-

Injunction
(Harassment)

Case No. 01-CV-857

Respondent: MARGARET O'CONNOR,

Address: 1104 N. Marshall Dr. #705
Milwaukee, WI 53202

Respondent's:

DOB:	Sex:	Race:	Height	Weight	Hair color	Eye color
3-5-66	F	W	5'7"	135	Drk Brown	

THE COURT FINDS:

1. The petitioner has filed a petition alleging harassment.
2. The petitioner has served upon the respondent a copy of the temporary restraining order and notice of the time for a hearing on the issuance of the injunction. The respondent had an opportunity to

be heard. This court has personal and subject matter jurisdiction.

3. There are reasonable grounds to believe that the respondent has violated § 947.013, Wisconsin Statutes.
4. There **is not** clear and convincing evidence that the respondent may use a firearm to cause physical harm to another or to endanger public safety.

THE COURT ORDERS:

1. An injunction to be entered against the respondent and the respondent be enjoined and restrained from: (*List specific prohibited conduct.)*

No contact of any type at any place petitioner(s) may be. No contact through any third person of petitioner(s) on behalf of respondent. Court also will order her (respondent) not to be in Walworth County

unless she is here for a court appearance or on her way to court. Court incorporates this because of hearing in 97-CV-735.

THIS INJUNCTION SHALL BE EFFECTIVE UNTIL 10-22-03.

Violation of this order shall result in immediate arrest and is punishable by imprisonment not to exceed 90 days or a fine not to exceed $1,000, or both, and payment of filing and service fees.

This injunction is entitled to full faith and credit in every civil or criminal court of the United States or any other state, or Indian tribal courts (to the extent such tribal courts have personal jurisdiction over non-tribal members).

BY THE COURT:

/s/ Robert J. Kennedy
Circuit Court Judge

Robert J. Kennedy
Name Printed or Typed

10-22-01
Date

This order's court stamp recorded a filing date of October 22nd, 2001, by the Clerk of Courts, Walworth Co., Claudia J. Last.

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1 **"immediate family" was added to the caption by Hon. Judge Robert Kennedy's court clerk, per Judge Kennedy's decision during the hearing.**

STATE OF WISCONSIN	CIRCUIT COURT	WALWORTH COUNTY

PAMELA S. PREDICK
GEORGE PREDICK,

Plaintiffs,

v.

Case No. 97-CV-735

MARGARET O'CONNOR,

Defendant.

ORDER

The October 9, 2001 motion of plaintiffs, Pamela S. Predick and George Predick, asking that the court find defendant, Margaret O'Connor, in contempt for violating the April 23, 1999 Permanent Injunction and August 28, 2001 Order of this Court having come on for hearing on October 17, 2001 and November 1, 2001, with plaintiffs being represented by Attorney Thomas J. McClure and defendant appearing pro se, and the Court having heard the evidence

from various sworn witnesses and hearing arguments of the parties and being otherwise fully advised in the premises;

IT IS HEREBY FOUND:

That defendant, Margaret O'Connor, violated the August 28, 2001 Order of the Court in that such Order required defendant to not violate the Court's earlier Order of April 23, 1999 and the Court finds defendant did violate Paragraph 7 of the April 23, 1999 Order in that defendant stalked and harassed a Predick family member, to-wit: the plaintiffs' daughter, Stephanie Predick, by attempting to force the Tina Busch automobile she was a passenger in off the road on October 3, 2001, and further, that the defendant violated the August 28, 2001 Order of the Court by defendant leaving numerous, after hours voice messages of an unreasonable and harassing nature on the office voicemail of counsel for the plaintiffs, Attorney Thomas J. McClure, particularly after receipt of an October 3, 2001 letter from plaintiffs' counsel, in an abusive manner utilizing personally derogatory language toward the plaintiffs and their counsel;

and further, that defendant committed an additional contempt of court on November 1, 2001 in the Court's presence by repeatedly interrupting the Court during its findings of contempt and making various inappropriate remarks about the Court's statements; and

IT IS HEREBY ORDERED THAT:

A. On the first aforementioned contempt violation, where the Court previously found the defendant violated a purge condition of the August 28, 2001 Order, to-wit: to not violate further any of the Court's orders, defendant is committed to serve 30 days incarceration in the Walworth County Jail but with the condition she may purge same by paying $2,000.00 to the McClure Law Offices, S.C. Special Trust Account no later than 14 days from November 1, 2001, i.e. so it arrives at the law office by November 15, 2001;

B. For the second contempt violation, defendant is committed to serve 30 days incarceration in the Walworth County Jail consecutive to the 30 days incarceration sanction immediately above, but the Court will allow defendant to purge this latter sanction by paying another $2,000.00 to the McClure Law Offices, S.C. Special Trust Account no later than 14 days from November 1, 2001 hearing, i.e. so it arrives at the law office by November 15, 2001;

C. The Court further finds that defendant failed to purge successfully the Court's August 28, 2001 Order requiring defendant serve 90 days incarceration in the Walworth County Jail for contempt as set forth in the August 28, 2001 Order, but the Court will allow defendant to purge such violation by remaining outside of Walworth County permanently, but if

defendant violates this purge condition, then defendant will be subject to the imposition of the original 90 days incarceration contempt sanction to be served in the Walworth County Jail as set forth in the Court's August 28, 2001 Order, but defendant may purge same by payment of $5,000.00 within 14 days of the Court's finding such condition of No-Entry to Walworth County has been violated, with the $5,000.00 being payable to the McClure Law Offices, S.C. Special Trust Account.

D. Due to the November 1, 2001 acts of contempt of court in the Court's presence by defendant by her repeatedly interrupting the Court and making inappropriate remarks about the Court's findings of contempt of November 1, 2001, the Court orders the Walworth County Sheriff to immediately take into custody the defendant who is ordered to be summarily

taken to the Walworth County Jail to be incarcerated for 2 weeks, but upon allowing defendant her right of allocution on November 1, 2001 regarding the summary contempt, the Court reduces this latter sanction by ordering defendant to immediately serve 1 hour in the Walworth County Jail and the Sheriff is to immediately take the defendant into custody to serve the one hour jail sanction; and

E. Defendant is to not violate this Order and all prior Orders remain in place.

Dated this 19th day of November, 2001 at Elkhorn, Wisconsin.

BY THE COURT:

/s/ Robert J. Kennedy
Circuit Court Judge

This order's court stamp recorded a filing date of November 19th, 2002, by the Clerk of Courts, Walworth Co., Claudia J. Last.

STATE OF WISCONSIN	CIRCUIT COURT	WALWORTH COUNTY

PAMELA S. PREDICK
and GEORGE PREDICK,

Plaintiffs,

vs.

Case No. 97-CV-735

MARGARET O'CONNOR,

Defendant.

ORDER

The Court having conducted a hearing on December 26, 2001 regarding the defendant's Motion to Modify Purge Conditions and Motion for Stay Pending Appeal, with the plaintiffs having appeared in person and by their attorney, Thomas J. McClure, and the defendant having appeared in person and by her attorney, Christopher Lowe, and the Court having heard the arguments of counsel and having considered the documents submitted by counsel and all matters of record in this matter;

IT IS HEREBY ORDERED AS FOLLOWS:

1. The defendant's Motion to Modify Purge Conditions is denied: the Court may reconsider the respondent's motion if the defendant participates in substantial professional counseling/therapy and provides the Court and plaintiffs with a written report from defendant's counselor/therapist that defendant no longer poses a danger to the plaintiffs and is unlikely to violate the Orders of the Court and defendant may, at that time, petition the Court to reconsider the civil injunction.

2. The defendant is permitted to speak the name "Predick" for purposes of counseling/therapy provided that any such statement of the name "Predick" by the defendant is made in a professional setting during the course of treatment:

3. The defendant may submit criteria for the Court to consider in reconsidering defendant's Motion for Stay Pending Appeal along with any case law and additional argument in support of defendant's Motion to Modify Purge Conditions on or before January 10, 2002; the plaintiffs shall have until January 17, 2002 in which to submit any response.

Dated this 9th day of January, 2002 at Elkhorn, Wisconsin.

BY THE COURT:

/s/ Robert J. Kennedy
Circuit Court Judge

This order's court stamp recorded a filing date of January 9th, 2002, by the Clerk of Courts, Walworth Co., Claudia J. Last.

STATE OF WISCONSIN	CIRCUIT COURT	WALWORTH COUNTY

TINA M. BUSCH,

Petitioner,

vs.

Case No. 01-CV-00857

MARGARET O'CONNOR,

Respondent.

ORDER

The Court having conducted a hearing on December 26, 2001 regarding the respondent's Motion to Reconsider Civil Injunction, with the petitioner having appeared in person and by her attorney, Thomas J. McClure, and the respondent having appeared in person and by her attorney, Christopher Lowe, and the Court having heard the arguments of counsel and having considered the documents submitted by counsel and all matters of record in this matter;

IT IS HEREBY ORDERED AS FOLLOWS:

1. The respondent's Motion to Reconsider Civil Injunction is denied: the Court may reconsider the respondent's motion if the respondent participates in substantial professional counseling/therapy and provides the Court and petitioner with a written report from respondent's counselor/therapist that respondent no longer poses a danger to the petitioner and is unlikely to violate the Orders of the Court and respondent may, at that time, petition the Court to reconsider the civil injunction.

2. The respondent may submit any case law and additional argument in support of respondent's Motion to Reconsider Civil Injunction on or before January 10, 2002; the petitioner shall have until January 17, 2002 in which to submit any response.

Dated this 11th day of January, 2002 at Elkhorn, Wisconsin.

BY THE COURT:

/s/ Robert J. Kennedy
Circuit Court Judge

This order's court stamp recorded a filing date of January 11th, 2002, by the Clerk of Courts, Walworth Co., Claudia J. Last.

STATE OF WISCONSIN	CIRCUIT COURT	WALWORTH COUNTY

TINA M. BUSCH

Petitioner,

v.

MARGARET O'CONNOR,

Respondent. Case No. 01CV857

And,

PAMELA S. PREDICK,

Petitioner,

v.

MARGARET O'CONNOR

Respondent. Case No. 97CV735

STATUS

The latter of the two above-captioned files has a history stretching back to 1997. In actual fact, it includes a file which is not referenced in the present matters. In the early part of 1997, the Predicks, as petitioners, filed for a

harassment injunction against the respondent. On July 22, 1997, petitioners and respondent entered into a stipulation and order under which a harassment injunction was issued by the Court for the petitioners and against the respondent. Apparently it was felt that the harassment injunction was not adequate. On December 11, 1997, the petitioners filed a complaint alleging counts of defamation, intentional infliction of emotional distress and for punitive damages. That matter went on for some time including the filing of an amended complaint in September of 1998 changing the first count to libel and slander. Eventually, a stipulation was entered into between the parties with an order imposing a permanent injunction against the respondent. The original copy, part of which was on fax, was filed on April 23, 1999, with the original filed on June 10, 1999. It included six pages of details of an agreement between the parties which specifically included protection for the petitioners and a long list of family members. In addition, the respondent agreed to pay $4,000 and was prohibited from contacting not only the

petitioners and their family but also the petitioners' medical providers, employers and utility providers. She was also prohibited from stalking, spying or harassing them. Penalties for non-compliance were set forth but unfortunately some of them turned out to be unenforceable (including requirements that if she was found in violation she was to be committed to jail. However, there were no purge conditions as a part of that portion of the agreement.)

On October 4, 2000, the petitioners filed a motion for a hearing to enforce compliance with that stipulation and order with affidavits of non-compliance. On October 31, 2000, that was replaced with an order to show cause with mostly the same allegations since the Court had advised the petitioners that the enforcement portions of the original enforcement portions of the stipulation and order were not enforceable in so far as they called for a sanction of jail time without purge conditions. On November 30, 2000, an amended order to show cause was filed and subsequently on December 15, 2000, there was a hearing at which a

temporary agreement pending a full hearing was entered into. On June 29, 2001, the Court began its full hearing at the end of which the Court found respondent in contempt of court and imposed jail sanctions and also purge conditions with further sanctions and consequent purge conditions if the order was again violated. On August 29, 2001, an order from that hearing outlining those sanctions and purge conditions was filed.

On September 14, 2001, respondent, now acting pro se, filed a motion for reconsideration which this Court subsequently denied. On October 10, 2001, the petitioners filed another order to show cause and for relief. They alleged an incident where the defendant had attempted to drive the car driven by Tina Busch, a friend of the petitioners, off the road. At the time Tina Busch had in the car with her her daughter and the petitioner's daughter.

On October 16, 2001, Tina Busch filed her petition for an injunction in file 01CV857. Busch alleged many of the same things about the automobile matter as had the

Predicks in their order to show cause filed October 10, 2001. On October 17, 2001, a hearing commenced on the Predicks' newest order to show cause which lasted approximately 2.5 hours. The hearing demonstrated to the Court at least preliminary through extensive testimony that an extremely dangerous incident had occurred involving the Busch car being forced off the road while two young children were therein. The evidence indicated up to that point that the operator of the vehicle that forced them off the road was the respondent.

On October 22, 2001 Busch's petition for an injunction came up for hearing. Proof of service upon the respondent was shown but the respondent did not appear. The Court not only granted the harassment injunction but included in it a requirement that the respondent not enter Walworth County. The respondent at the time lived outside of Walworth County though she does have a mother who lives in Delavan which is in Walworth County. The Court

relied in part upon the testimony it heard at the first part of the hearing on the Predick matter of October 17, 2001.

On November 1, 2001, the Predicks most recent order to show cause recommenced and another 4.5 hours of hearing and decision transpired. The Court found again for the petitioners and again found the respondent to be further in contempt of court and imposed sanctions with further purge conditions including the non-entry to the county similar to the injunction in the Busch case. (see the November 19, 2001, order outlining the Court's findings in that regard).

On November 16, 2001, the respondent filed a motion for stay pending appeal and to modify the purge conditions in regard to the Predick matter. She also filed a motion for stay pending appeal and to modify the injunction in the Busch matter. At this time, she did appear by an attorney, Mr. Meurer. On November 21, 2001, Mr. Meurer moved to withdraw and subsequently Attorney Lowe substituted in. On December 26, 2001, the parties appeared before the Court on both motions to stay and Attorney Lowe filed a

memorandum of law in support of his motions. The Court gave a lengthy explanation for its decisions and ended up denying the motions for stay and for modification of purge conditions and modification of the injunction conditions. The Court did indicate that further briefs could be filed to address the applicable law that should apply on motions for stay pending appeal. (see January 9, 2002, order in both files outlining the Court's findings after the December 26, 2001, hearing).

On January 10, 2002, the respondent filed her post-hearing brief in reference to the issues raised at the December 26, 2001, hearing dealing with the stay pending appeal. On January 17, 2002, the petitioners filed their brief (Attorney McClure now represents the petitioners in both files) and on January 18, 2002, the Predicks brief was filed in response to the respondent's post-hearing brief.

The matter is now ripe for decision.

DISCUSSION AND DECISION

The Court first discusses 97CV735. The respondent prepared a brief for both cases but except for the last portions of those briefs they are identical. Nevertheless, the issues involved in each case are factually different.

Respondent first points to Leggett v. Leggett, 134 Wis. 2d 384 (Ct. App. 1986). Respondent is correct that this case set forth the criteria for a stay pending appeal. Those criteria are: (1) a strong showing that the moving party is likely to succeed on the merits of the appeal; (2) a showing that unless a stay is granted, the moving party will suffer irreparable injury; (3) a showing that no substantial harm will come to other interested parties; and (4) a showing that a stay will do no harm to the public interest. Respondent also correctly points out that these four factors are interrelated. Although respondent does not specifically state it, a strong showing that a party is likely to succeed on the merits really means that there must be more than a mere possibility of

success on the merits. It is not necessary that the likelihood of success be greater than the likelihood of failure.

Applying those criteria to 97CV735, the Court notes as follows:

1. STRONG SHOWING

In 97CV735 the Court does not believe that the respondent can make a strong showing that the respondent is likely to succeed on the merits of appeal. The entire record of this file up the most recent hearings have clearly demonstrated that the respondent has harassed and even physically threatened and endangered Pamela S. Predick and a younger member of her family. The harassment has extended to Mr. Predick and other members of their extended family. Despite repeated orders, some even stipulated to by the respondent, the harassment and physical threats have continued. On one prior occasion the evidence strongly suggests respondent attempted to side-swipe Mrs. Predick with her car when Mrs. Predick was out jogging. That of course happened a number of years ago. On another more

recent occasion the evidence shows that respondent attempted to drive a car operated by Tina Busch off the road. In between and in addition to those physical threats the evidence is replete with extensive harassment which has driven the Predicks to desperation. That conduct has imposed upon the Predicks tremendous cost in an effort to stop respondent's conduct which terrorizes and intimidates them. There is no good reason for such conduct as the evidence in the record shows. In most recent hearings the Court found that once again the respondent had physically endangered the Predicks by attempting to force Tina Busch's car off the road while the Predicks' daughter was in the car. The Court found the respondent in contempt once again and imposed jail sanctions which could be purged under various conditions. One of those conditions most recently imposed was to require the respondent to stay out of Walworth County. It is true that the respondent's mother lives in the county. Unfortunately, it is also true that the Predicks live directly across the street from the respondent's mother. The

Court took the position that even though this would impede the relationship between the respondent and her mother such a purge condition was essential to keep the peace and maintain the security of the Predicks and their family. Requiring the respondent to stay out of Walworth County at least gave the petitioners a margin of territorial safety. If the respondent enters Walworth County at least there is a reasonable period of time in which she can be detected and prevented from attacking or harassing the petitioners. That particular purge condition is appropriate in light of the extraordinary facts of this case. For all of the above reasons, which only state in part the extensive findings of fact made by this Court on this matter, the Court sees little likelihood that the respondent will succeed on the merits.

2. IRREPARABLE INJURY

There is also no showing in the materials filed by the respondent that the respondent will suffer irreparable injury. It is true the respondent will not have easy access to her mother. However, there is no reason to believe that her

mother is not fully capable of traveling outside Walworth County to see her daughter. Furthermore, there are other members of the family that might be able to help transport the mother if she is not able to drive herself. Thus, the respondent is not cut off from contact with her mother. Under those circumstances the respondent does not suffer irreparable injury.

3. SUBSTANTIAL HARM

There is evidence that substantial harm will come to the petitioners if in fact the territorial purge condition the Court set is stayed. This case is replete with examples of the respondent utilizing the area of her mother's home to harass and physically endanger the petitioners. Given those circumstances, the petitioners have been driven to a great deal of emotional distress and fear. If that territorial margin of safety and/or any of the other purge conditions are stayed, the petitioners will be deprived of that safety to which they are entitled as ordinary citizens. When one person literally conducts an extensive stalking campaign attacking both the

emotional and physical safety of others without any reasonable cause, the attacked persons will suffer substantial harm if the conduct is not stopped. In this case the purge conditions that require the respondent to stay out of the county and to pay other costs in order to purge the contempt and future costs if there's further violations is the only appropriate way to prevent substantial harm to the petitioners.

4. HARM TO THE PUBLIC INTEREST

The respondent's brief does not present any evidence to show that a stay will do no harm to the public interest. The public interest clearly requires that the safety of its citizens be maintained. Furthermore, the public interest requires that if a particular person unfairly and unjustly, without good cause, presents an extreme danger to other persons that person who presents that danger must somehow be restrained. A classic example of that is when criminal courts set bond conditions which involve no contact with victims. A purge condition that requires the respondent not

to have any contact with the victims and to provide that the respondent also stay a substantial distance from the victims promotes the public interest. If a stay were granted to deny those, the public interest would be definitely harmed because of the increased danger that respondent would continue her inexplicable and dangerous conduct toward the petitioners. A stay would therefore harm the public interest and it certainly could not be said that a stay would not harm the public interest.

For all of the above reasons, this Court denies the requested stay in file 97CV735.

In regard to file 01CV857 the matter is slightly different. In regard to the strong showing there is at least a more reasonable possibility that the respondent might succeed on the merits of that appeal. The Court has imposed a territorial restriction keeping the respondent out of Walworth County and thus apart from Tina Busch, the petitioner in this file. However, the territorial restriction is based upon the harassment statute and the right of the Court

to enjoin harassment. In this case the Court has found that the appropriate way to enjoin the harassment, given the history of this case and the others referred to, is to give Tina Busch a substantial territorial margin of safety from the respondent. It is true that the evidence in this case does not show extensive violent acts against Tina Busch. However, the record does show that most recently the respondent has begun to look upon Tina Busch as some sort of rival for the affections of Mrs. Predick. She is convinced that Mrs. Predick and Ms. Busch, in the absence of any evidence, are lovers. Nothing the Court has seen suggests that this is the case but the respondent is convinced. Furthermore, the respondent has made numerous statements suggesting that she was a former lover of the petitioner, Mrs. Predick, which also does not really seem likely. In any case, whether it's true or not it would not entitle the respondent to harass the Predicks or Tina Busch. Nevertheless, the respondent has begun to look upon Tina Busch, from the evidence in the record, as an object of her hatred and displeasure. That

recently culminated in the act of attempting to drive Ms. Busch's car off the road. When the Court made the territorial ruling, it was on the day set for injunction hearing wherein the respondent had been notified and had chosen not to appear. However, the Court had already heard extensive testimony from the first part of a hearing in the Predick case leading to the most recent findings of contempt against the respondent in that case. The evidence adduced at that hearing convinced this Court that in addition to simply an injunction preventing harassment the Court had to extend the protection in order to make it meaningful. Thus the Court required that the respondent stay out of Walworth County and thus give Tina Busch a margin of territorial safety. There at least the higher court may well find that the Court has stepped beyond its authority. This Court thinks not but that is certainly possible. Thus the Court concedes that the respondent has made a strong showing that the respondent is likely to succeed on the merits of the appeal.

The Court now turns to the second criteria. If the stay is not granted, will the respondent suffer irreparable injury? Here the Court adopts its previous discussion made above in reference to the Predick matter. The Court does not see any irreparable injury because the respondent cannot visit her mother in Walworth County.

The Court then turns to the third criteria: whether there is a showing that no substantial harm will come to other interested parties. There the respondent cannot make such a showing. In fact the most recent evidence suggests that the respondent will likely cause substantial harm to Tina Busch if she is able to get into close proximity of her. Since Tina Busch lives very close to the Predicks and as a good friend often visits their home, she becomes greatly endangered under the circumstances where the respondent would be visiting her mother just across the street from the Predicks. Furthermore, the evidence shows that the respondent frequently will rent cars to drive around, including throughout Walworth County. On a number of instances

involving that type of driving, she has presented a threat to the Predicks and most recently to Tina Busch and the two young girls. Given the totality of evidence in both files, this Court has reason to believe that substantial harm will come to Tina Busch in addition to the Predicks as well as their children if the respondent is not kept away from them. An effective way to do that, at least in terms of immediate danger, is to keep them territorially distant from each other. This Court is convinced, given the totality of the record in both files, that substantial harm will come to Tina Busch if the respondent is not kept territorially distant.

On the fourth item, the Court adopts its previous argument in regard to the Predicks. This Court does believe that the respondent can show that a stay will not harm the public interest. In fact, a stay which would allow the respondent reasonable access to Tina Busch from a territorial point of view would only foster extreme danger and perhaps a disaster. Thus, the stay of the condition that respondent not enter Walworth County would harm the public interest and

certainly it cannot be shown that it would not harm the public interest.

The Court has balanced the four criteria and although there is a showing that the respondent might well succeed on the merits of her appeal in regard to the territorial restriction the overwhelming balance of the four interrelated factors require this Court not to grant a stay of the injunction at this time nor a stay of the territorial restriction.

CONCLUSION AND DECISION

For the above reasons, the respondent's motion for stay or modification of the purge conditions or the terms of the injunction are denied. The attorney for the petitioners in both files is directed to prepare an Order accordingly.

Dated: March 5, 2002

BY THE COURT:

/s/ Robert J. Kennedy
Judge Robert J. Kennedy

This order's court stamp recorded a filing date of March 5th, 2002, by the Clerk of Courts, Walworth Co., Claudia J. Last.

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April 22, 2003

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Appendix G

You are hereby notified that the Court has entered the following order:

Nos: 02-0503 Predick v. O'Connor L.C. #97CV735
02-0504 Busch v. O'Connor L.C. 301CV857

A petition for review pursuant to Wis. Stat. § 808.10 having been filed on behalf of defendant-appellant-petitioner and respondent-appellant-petitioner, Margaret O'Connor, and a "motion" having been filed by the plaintiffs-respondents, Pamela and George Predick and Tina Busch, which the court construes as a response, and considered by this court;

IT IS ORDERED that the petition for review is denied, with $50 costs to be divided equally among the respondents.

Cornelia G. Clark
Clerk of Supreme Court

THE PROVISIONS OF WISCONSIN CHAPTER 785 THAT GOVERN REMEDIAL CONTEMPT OF COURT PROCEDURE

§ 785.03(1)(a). A Person aggrieved by a contempt of court may seek imposition of a remedial sanction for the contempt by filing a motion for that purpose in the proceeding to which the contempt is related. The court, after notice and hearing, may impose a remedial sanction authorized by this chapter.

§785.04(1). A court may impose one or more of the following remedial sanctions:

(a) Payment of a sum of money sufficient to compensate a party for loss or injury suffered by the party as the result of a contempt of court.

Imprisonment if the contempt of court is a type included in s. 785.01 (1) (b), (bm), (c) or (d). The imprisonment may extend

only so long as the person is committing the contempt of court or 6 months, whichever is the shorter period.

(c) A forfeiture not to exceed $2,000 for each day the contempt of court continues.

(d) An order designed to ensure compliance with a prior order of the court.

(e) A sanction other than the sanctions specified in pars. (a) to (d) if it expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

THE PROVISIONS THAT GOVERN HARRASSMENT RESTRAINING ORDER AND INJUNCTION PROCEDURE UNDER WISCONSIN STATUTUE § 813.125, THAT ARE PERTINENT TO THIS INSTANT CASE

(1) DEFINITION. In this section, "harassment" means any of the following:

(a) Striking, shoving, kicking or otherwise subjecting another person to physical contact or attempting or threatening to do the same.

(b) Engaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose.

(2) COMMENCEMENT OF ACTION. An action under this section may be commenced by filing a petition described under sub. (5)(a).

(3) TEMPORARY RESTRAINING ORDER. (a) A judge or circuit commissioner may issue a temporary restraining order ordering the respondent to cease or avoid the harassment of another person, to avoid the petitioner's residence, except as provided in par. (am), or any premises temporarily occupied by the petitioner or both, or any combination of these remedies requested in the petition, if all of the following occur:

1. The petitioner files a petition alleging the elements set forth under sub. (5)(a).
2. The judge or circuit court commissioner finds reasonable grounds to believe that the respondent has violated s. 947.013.

(am). If the petitioner and the respondent are not married, and the respondent owns the premises where the petitioner resides, and the petitioner has no legal interest in the premises,

in lieu of ordering the respondent to avoid the petitioner's residence under par. (a) the judge or circuit court commissioner may order the respondent to avoid the premises for a reasonable time until petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(b) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on the issuance of an injunction under sub. (4). A judge or circuit commissioner shall hold a hearing on issuance of an injunction within 7 days after the

temporary restraining order is issued, unless the time is extended upon written consent of the parties or extended once for 7 days upon a finding that the respondent has not been served a copy of the temporary restraining order although the petitioner has exercised due diligence.

(4) INJUNCTION. (a) A judge or circuit court commissioner may [grant an injunction][[issue a temporary restraining order]] ordering the respondent to cease or avoid harassment of another person, to avoid the petitioner's residence, except as provided in par (am), or any premises temporarily occupied by the petitioner or both, or any combination of these remedies requested in the petition, if all the following occur:

1. Petitioner files a petition alleging the elements set forth under sub. (5)(a).

2. The petitioner serves upon the respondent a copy of a restraining order obtained under sub. (3) and notice of the time for the hearing on the issuance of the injunction under sub. (3)(c). The restraining order or notice of hearing served under this subdivision shall inform the respondent that, if the judge or circuit court commissioner issues an injunction, the judge or circuit court commissioner may also order the respondent not to possess a firearm while the injunction is in effect.

3. After hearing, the judge or circuit court commissioner finds reasonable grounds to believe that the respondent has violated s. 947.013.

(am). If the petitioner and the respondent are not married, and the respondent owns the premises where the petitioner resides, and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner's residence under par. (a) the judge or circuit court commissioner may order the respondent to avoid the premises for a reasonable time until petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

b. The injunction may be entered only against the respondent named in the petition.

c. An injunction under this

subsection is effective according to its terms, but not for more than 2 years.

(5) PETITION. (a) The petition shall allege facts sufficient to show the following:

1. The name of the person who is the alleged victim.

2. The name of the respondent.

3. That the respondent has violated s. 947.013.

(am). The petition shall inform the respondent that, if the judge or circuit court commissioner issues an injunction, the judge or circuit court commissioner may also order the respondent not to possess a firearm while the injunction is in effect.

(b) The clerk of circuit court shall provide simplified forms.

(5m) CONFIDENTIALITY OF VICTIM'S ADDRESS. The petition under sub. (5) and the court order under sub. (3) or (4) shall not disclose the address of the alleged victim

(7) PENALITY. Whoever violates a temporary restraining order or injunction issued under this section shall be fined not more than $1,000 or imprisoned not more than 90 days or both.

(8) NOTICE OF FULL FAITH AND CREDIT. An order or injunction issued under sub. (3) or (4) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.